THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.1355 of 2005

DATE:03-08-2005

Between:

1 P.Jagadeesh Babu S/o P.Jayaram Das

R/o H.No.7-97, Opp:Swarna Vidyalayam,

Tiruchanoor Road, Tirupathi, chittoor District.

..... PETITIONER

AND

1 The Executive Officer,

Tirumala Tirupathi Devasthanam,

Tirupathi, chittoor District and another.

….. RESPONDENTS

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.1355 of 2005

ORDER:

Challenging the proceedings in Roc.No.TL1/6119/03, dated 14-07-2004, passed by the first respondent rejecting the legitimate claim of the petitioner for fixing up of his notional seniority in the cadre of Supervisors/Assistant Engineers as per the roster point of 2/1 of 1976, as per the roster register against a backlog S.C vacancy, as illegal and arbitrary and consequently to direct the first respondent herein to give the notional seniority to the petitioner as per the roster point at 2/1 of 1976 in the cadre of Supervisor/Assistant Engineer by giving subsequent promotion with all consequential benefits, this writ petition is filed.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was appointed as a Supervisor/Assistant Engineer on 02-03-1979 in the first respondent-institution in a backlog S.C vacancy of 1976 brought forwarded to the year 1979 against roster point 2/1 of 1976. As his seniority was not fixed according to the roster point mentioned above, he was denied all his subsequent promotions, for which he was eligible and entitled to, in spite of his repeated oral and written representations. Considering his latest representation, the first respondent sought clarification from the second respondent-Government regarding

fixation of his notional seniority in the cadre of Assistant Engineer over and above the persons appointed in the year 1979. The Government considered his case and directed the first respondent to implement its orders in Memo No.27621/Endowments/111/A2/2003-4, dated 17-01-2004 giving suitable clarification. But, the first respondent, even after obtaining clarification from the Government, did not implement the said order. Challenging the same, the petitioner filed W.P.No.8709 of 2004 before this Court and this court disposed of the same with a direction to the first respondent to pass appropriate orders on the clarification issued by the Government, dated 17-01-2004. But, the first respondent issued proceedings dated 14-07-2004 rejecting the legitimate claim of fixing notional seniority of the petitioner. It is further stated that the Government itself reminded the first respondent by its letters dated 05-10-2004, 20-11-2004 and 20-12-2004 on the said issue. But, in spite of the same, the first respondent did not choose even to reply to the Government considering his case. Challenging the same, the present writ petition is filed.

A counter affidavit is filed by the first respondent stating that the Government observed, while issuing the memo dated 17-01-2004, that while filling up the vacancies of Assistant Engineers during the year 1979, the instructions issued in G.O.Ms.No.277, dated 22-03-1976, that particularly the reserved vacancies brought forward from previous year, the appointments to such reserved vacancies shall be made first before the cycle of rotation is continued from the last point of previous recruitment year. Therefore, keeping the clarification in view, the case of the petitioner was considered and found that there are no valid grounds in his plea, and therefore, his case was rejected by the order dated 14-07-2004 and there are no grounds to interfere with the same.

Another counter affidavit has been filed by the second respondent stating that

keeping in view of the rule position

in G.O.Ms.No.277, dated 22-03-1976, the Government passed Memo No.27621/Endts.III/A2/2003-4, dated 17-01-2004 advising the first respondent to restore the ranking of the petitioner in the panel seniority list of the recruitment year made in 1979, as he was initially appointed as Assistant Engineer by direct recruitment under S.C. backlog post of Roster Point 2/1 of 1976 carried forward to the year 1979. But, the first respondent did not implement the said order and it is against the spirit of G.O.Ms.No.277, dated 22-03-1976.

The learned counsel appearing for the petitioner contended that since the recruitment of the backlogs and open category are of the same year, the petitioner has to be shown in the top of the seniority list, but he was not shown, and therefore, he made a representation to the first respondent and the first respondent though solicited and obtained orders from the Government, did not implement the same, and therefore, he prays to allow the writ petition.

The learned counsel appearing for the first respondent contended that the writ petition is liable to be dismissed on the ground of laches and delay and that the affected parties are not being added as parties and that as per the rules, the records were destroyed in the year 2002 and at this belated stage, the seniority of the petitioner cannot be declared.

On the other hand, the learned Government Pleader appearing for the second respondent contends that the Government issued instructions as per the proceedings dated 17-01-2004 to restore the ranking of the petitioner in the seniority list of the recruitment made in the year 1979.

The dispute is with regard to the seniority. The first respondent produced the original Roaster point register and the same has been perused. In the year 1978, there was no recruitment as per the Recruitment Roster. But in the year 1979, the names of the petitioner and some other sames have been shown. Admittedly, the petitioner was

recruited in the backlog vacancy. It is not disputed before this Court that when two recruitments have taken place, one relating to backlog vacancy and another relating to general vacancy, the persons selected in the backlog vacancy, reserved for Scheduled Castes and Scheduled Tribes, should have precedence over the candidates selected for the general vacancy in the matter of seniority. The pleadings are lacking as to the notifications with regard to the writ petitioner and other candidates, who were appointed in the year 1979.

According to the learned counsel for the first respondent, the recruitment of five other persons has already commenced in the year 1978, and therefore, their year of recruitment is 1978. If the contention of the learned counsel for the first respondent is taken to be true, then certainly their names should have been shown in the Roster Register in the year 1978. But, in the Roster Register for the year 1978, it is stated that there was no recruitment.

No doubt, there is an abnormal delay in making representation with regard to the promotion of the writ petitioner. But, at the same time, on that ground, the writ petition cannot be dismissed in view of the fact that when the petitioner made a representation to the first respondent in the year 2003, the same was forwarded to the Government soliciting the instructions from the Government. Thereafter, the Government passed orders vide Memo No.27621/Endowments/111/A2/
2003-4, dated 17-01-2004 advising the first respondent to restore the ranking of the petitioner in the seniority list of the recruitment made in the year 1979, as he was initially appointed as Assistant Engineer by direct recruitment under S.C. backlog post of Roster point 2/1 of 1976 carried forward to the year 1979.

The learned counsel for the petitioner contended that if the said order of the Government is implemented, the seniority of the five other persons would be effected and deemed to be decided behind their back.

The learned counsel appearing for the first respondent is right in saying that no order

can be passed effecting the seniority of the five other persons behind their back and without giving any opportunity to them.

But at the same time, the petitioner's right cannot be denied in view of the orders passed by the Government, dated 17-01-2004. Therefore, the first respondent is directed to implement the orders of the second respondent-Government, dated 17-01-2004. While implementing the orders of the second respondent-Government, if the seniority of any of the juniors or the persons, named in para-6 of the counter affidavit filed by the first respondent, is being effected, the first respondent shall give an opportunity to those persons and pass appropriate orders within a period of two months from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No order as to costs.

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K.C.BHANU, J

Dated August 03, 2005.

Note:

Furnish C.C. in three days.

YCR